IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

CRIMINAL APPLICATION NO. 2427 OF 2006

Jayantilal Deepchand Parmar ..Applicant
V/s
Sou. Vaishali S.Farne & Anr. ..Respondents.

Mr.S.R. Page, Advocate for the applicant.

Mr. Y.S.Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 6TH JUNE , 2007.

P.C.

. Heard Mr Page, learned Counsel for the applicant. None for the respondent No.1. Perused the impugned judgment.

2. The applicant had filed the complaint under section 138 of Negotiable Instruments Act against respondent No.1, who is the Medical Practitioner. It is admitted fact that She had taken loan of Rs.3 lakh from the present applicant for construction of her hospital. According to the complainant, she had repaid the amount of Rs. 2 Lakh by two separate cheques and those cheques were encashed. However, 3rd cheque, which was issued on 16/8/2004 for balance amount of Rs.1 lakh was presented

to the bank for encashment but was dishonoured for want of sufficient funds. He issued notice but in spite of that respondent did not make the payment. Thereafter he lodged complaint under Section 138 of Negotiable Instruments Act. Plea of respondent No.1 was that she had taken the loan at exorbitant interest at the rate of 5% per month and she was paying amount of Rs.15,000/- as interest per month. In the beginning itself, She had given three separate cheques to the applicant, as a security to the loan amount. Out of them, two cheques were presented by him and were encashed. According to her, thereafter she had made payment of Rs. 75,000/- to the applicant from time to time, but the 3rd blank cheque bearing No. 872878 Exh.19 remained with the applicant. When he presented the cheque for encashment after filling the contents, only amount of Rs. 25,000/- was due from her. Her plea was that as per the agreement, blank cheques were given as the security of the loan amount and the cheques were to be returned on repayment of the money. She also examined the defence witness in support of her plea that from time to time she had repaid the amount to the applicant and the balance of Rs.25,000/- only was due. The learned trial Court noted that the three cheques issued by the

respondent had consecutive numbers, that is 872876,872877 and 872878. The first cheque, which was presented was bearing date 12/12/2003 and the 3rd disputed cheque was bearing date 16/8/2004. The learned Magistrate observed that it was difficult to believe that the respondent, who is Medical Practitioner had no cheque transaction during the period of 8. In view of these circumstances and the oral evidence of the defence witness, the learned Magistrate came to the conclusion that when this cheque was presented to the bank, the amount of Rs. 1 Lakh was not due and the blank cheque was filled in by the applicant before presentation to the bank. The writing of the signature of the respondent on the said cheque and the writing of the remaining contents were different. With these observations the complaint came to be dismissed and the respondent was acquitted.

3. By this application, the applicant seeks leave to prefer appeal against the order of acquittal. However, taking into consideration the evidence discussed by the trial Court and pointed out above, it cannot be said that the impugned judgment is per se wrong, perverse or illegal. There is a possibility of

two different views but merely because a different view also can be taken, it cannot be said that the view taken by the trial court was wrong. In view of the circumstances noted above, I do not find any justification to grant leave to prefer appeal.

4. Leave refused. The application stands rejected.

(J.H. BHATIA, J.)